
EVALUATOR MANUAL TRANSMITTAL SHEET

Distribution:

☐ All Child Care Evaluator Manual Holders
☐ All Residential Care Evaluator Manual Holders
☒ All Evaluator Manual Holders

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AB 978 – Evaluator Manual Revisions

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Revisions to Evaluator Manual section 1-1415 as needed to comply with AB 978, revisions to section 1-1160, revisions to update the current names for Investigations Branch and Licensing Program Manager and minor corrections in formatting.

Filing Instructions:

REMOVE – Pages 1, 5, 35, 37 – 42, 48, 51, 56, 61, 63, 70, 72, 74, 77, 83, 84, 92, 94, 94.1, 97-107, 120, 125 – 127, 132, 138, 145, 146, 153 – 157 and 169

INSERT – Pages 1, 5, 35, 37 – 42, 48, 51, 56, 61, 63, 70, 72, 74, 77, 83, 84, 92, 94, 94.1, 97-107, 120, 125 – 127, 132, 138, 145, 146, 153 – 157 and 169

Approved:

Original Document Signed by
Seton Bunker for Thomas Stahl

2/10/10

THOMAS STAHL Chief
Policy Development Bureau
Community Care Licensing Division

Date

Contact Person: John Avis

Phone Number: (916) 322-5507

1-0000 ENFORCEMENT ACTIONS	1-0000
General Statement	1-0010
Licensing Responsibilities Performed by Counties	1-0020
Glossary	1-0030
CIVIL PENALTIES, GENERAL STATEMENT	1-0040
Violations Resulting in Assessment of Civil Penalties	1-0045
Unlicensed Facility Operation	1-0050
Background Check Violations	1-0055
Parents Rights Addendum Violations Family Child Care Homes only	1-0057
Civil Penalties Assessed for Failure to Meet Plan of Correction Due Date	1-0060
Civil Penalties for Repeat Violations	1-0065
Violations Leading to Death, Injury, or Sickness of Client	1-0070
Additional Civil Penalty Assessments	1-0072
Quick Reference – Civil Penalties	1-0075
NON-COMPLIANCE WITH THE LICENSING LAWS AND REGULATIONS	1-0100
Case Assessment	1-0110
Facility Compliance Plan	1-0200
Non-Compliance Conference	1-0300
Documenting the Non-Compliance Conference	1-0310
Documentation Requirements for Child Care Facilities	1-0311
Sample Non-Compliance Conference Letter Language	1-0315
Compliance Plan Conference Criteria	1-0320
Sample of Compliance Plan Conference Letter Language	1-0325
Compliance Plan Conference Office Procedures	1-0330
Letter Language to Schedule a Compliance Plan Meeting	1-0335
SUPPORT UNITS	1-0400
TECHNICAL SUPPORT PROGRAM (Repealed 11/07)	1-0500
INVESTIGATIONS BRANCH	1-0600
Investigative Services	1-0610
Investigative Priorities	1-0620
Case Acceptance	1-0630
Unlicensed Facility Complaint Investigations	1-0640
Case Referrals from Outside Sources	1-0650
Investigations Branch Model (Repealed 11/09)	1-0660
CENTRAL OPERATIONS BRANCH, AUDIT SECTION	1-0700
Audit Services	1-0710
Description of Audit Services	1-0720
Requesting Audit Services	1-0730
Priority Criteria for Audits	1-0740
Case Acceptance and Handling	1-0750
Trust Audits	1-0760
Conveyance of Audit Findings via an Audit Report (Repealed 7/00)	1-0762
Conveyance of Audit Findings via the LIC 809 Process (Repealed 7/00)	1-0764
Corrective Action Accompanying Audit Findings (Repealed 7/00)	1-0766
Appeal Process for Trust Audit Findings (Repealed 7/00)	1-0768

**1-0020 LICENSING RESPONSIBILITIES PERFORMED
BY COUNTIES****1-0020**

The California Department of Social Services has, by contract, delegated responsibility for the licensure of family child care homes and/or foster family homes to some of the counties. As a result, in many parts of the State, there may be a State Licensing Office, known as a “Regional Office,” responsible for the Child Care Program, the Adult Care Program, the Children’s Residential Program or the Senior Care Program as well as a county licensing office responsible for licensing family child care homes and/or foster family homes.

Where such contractual arrangements are in effect, the counties are legally the agents of the State of California, performing all the licensing activities related to family child care homes and/or foster family homes, including all required facility visits, and, when necessary, recommendations for and preparation of administrative actions. The Statewide Program Offices review county recommendations and make final decisions regarding the submission of administrative actions to the Deputy Director.

Statements which refer to a “Regional Office” (State Regional Office) are in most instances equally applicable to county licensing offices. The phrase “local Licensing Office” refers to both a State and a county Licensing Office. Where there are differences in the manner in which State and county cases should be handled they will be described separately.

The references to “**Investigations Branch**” are not, however, applicable to the counties. The State Department’s Auditors and peace officer investigators prepare certain cases for the State Regional Offices but do not perform investigations for the counties. This is because investigative responsibilities are assumed by the counties under their contracts with California Department of Social Services. Investigations that may be needed in county cases should be conducted by county licensing staff, Child Protective Services, or local law enforcement.

Any questions about how a county case should be handled should be referred to the Statewide Program Office responsible for that county.

1-0030 GLOSSARY**1-0030**

The following terms, which will be used throughout this section, have been alphabetized for easy reference.

Accusation: A formal written statement of the statutory or regulatory violations or other deficiencies upon which a request to revoke a license with or without a suspension. The Accusation, also known as a pleading, is prepared by the Legal Division of the California Department of Social Services and is based on the Statement of Facts prepared by the Licensing Program Analyst.

**1-0330 COMPLIANCE PLAN CONFERENCE OFFICE
PROCEDURES (Continued)****1-0330**

8. The Regional Manager advises the Program Administrator of the intended action.
9. County licensing personnel advise the regional county liaison of the proposed use of the Compliance Plan.
10. The Regional Manager sends the licensee a letter explaining the Department's desire to enter into a Compliance Plan in order to bring the facility into compliance and avoid taking administrative action. A copy of the draft Compliance Plan proposed by the Department may be sent with the letter. A meeting date and time are specified to review the file, go over the plan and obtain signatures. If the licensee does not wish to participate, the matter will be referred for administrative action.

There are two components to a Compliance Plan Conference: (1) The licensee reviews the facility file, (2) The licensee meets with the Regional Manager, Licensing Program Analyst and Licensing Program Manager to discuss the plan. In this meeting:

- Violations are reviewed.
- Corrective actions and time frames are developed and agreed upon.
- Consequences for failure to comply are reviewed.

Three copies of the plan are signed: One for the licensee, one for the facility's public file, one for the Statewide Program Office. Regional Offices will identify/flag the files of facilities, which have signed Compliance Plans in the same way legal cases are identified. A log will be maintained of all facilities with Compliance Plans. Licensing Program Analysts will flag all facilities with Compliance Plans on the problem facility log.

Periodic site visits may be conducted by the Licensing Program Analyst to ensure compliance. Violations of the conditions will be reviewed by the **Licensing Program Manager/Licensing Program Analyst** and a recommendation for amending, dissolving, or continuing the plan will be forwarded to the Regional Manager for decision. If dissolution is sought, administrative action will be initiated through the standard legal process and a letter of dissolution sent to the licensee with copies to the facility's file and Program Administrator.

1-0400 SUPPORT UNITS**1-0400**

The Department uses investigative and support units to assist in cases both before and after they are referred to the Legal Division for administrative action. The following sections define the purpose and functions of the **Investigations Branch** (1-0600) and the Audit Section (1-0700).

1-0500 TECHNICAL SUPPORT PROGRAM (REPEALED 11/07)**1-0500****1-0600 INVESTIGATIONS BRANCH****1-0600**

Under the direction of the Program Administrators, **Investigations Branch** receives requests for investigative services from the Regional Offices within the Community Care Licensing Division, the California Department of Social Services Legal Division and other authorized sources.

1-0610 INVESTIGATIVE SERVICES**1-0610**

Investigations Branch provides five types of investigative services:

1. **Investigation:** Objective investigation of the complaint to determine the validity of the allegations, determine the findings, recommend course of action, and prepare written report.
2. **Investigation Assignment:** Specific investigative tasks (e.g., obtaining criminal record verification, police reports, or hospital records, serving temporary suspension orders, interviewing suspects or victims).

1-0610 INVESTIGATIVE SERVICES (Continued)**1-0610**

3. **Consultation Services:** Suggestions, instructions and information both general and specific, to assist Regional Office staff in conducting investigations or evaluating information.
4. **Legal Support:** Assistance to attorneys in the administrative, criminal, or civil prosecution of established violations.
5. **Criminal Arrest Inquiries:** Investigations into the alleged criminal conduct of individuals subject to Community Care Licensing Division jurisdiction.

1-0620 INVESTIGATIVE PRIORITIES**1-0620**

Complaints will be investigated by the appropriate staff (**Investigations Branch** and/or Regional Office) depending on the nature and severity of the complaint allegation and/or the decisions made by the Team Review during the referral process (see *Evaluator Manual* Section Appendix F) for discussion of Team Review process). The most serious complaints will be Priority I and the least serious complaints will be Priority IV.

Please note that the definitions of the Priorities are not the same as the definitions of abuse provided by statutes (i.e. Penal Code 11165.6-definition of child abuse; Welfare and Institution Code 15610.07-definition of elder abuse)

The **Licensing Program** Manager or Regional Manager will refer all complaints that meet the criteria for Priority I and/or II cases to **Investigations Branch** for investigation. This type of complaint will be referred to **Investigations Branch** within eight working hours of receipt via telephone or FAX and prior to any action being taken by the Regional Office. Case acceptance or rejection will be determined after consultation between the Regional Office staff and **Investigations Branch**. The Regional Manager may refer Priority III complaints, as he/she deems appropriate. The inquiry into Priority IV complaints will be the responsibility of the Regional Office.

In cases of multiple allegations of various priorities, the Team Review Process (See *Evaluator Manual* Section Appendix F) will determine Investigator/Licensing Program Analyst responsibilities during the investigation. In general, the Licensing Program Analyst will retain responsibility for the investigation of Priority III and IV allegations, unless otherwise determined through prior agreement. The assigned Investigator and Licensing Program Analyst will coordinate their investigations through regular consultation.

In the case of a probable temporary suspension order, the investigator must keep the Program Administrator/Regional Manager/Assigned Attorney informed of the progress of the investigation through the Team Review Process (see *Evaluator Manual* Section Appendix F). Supporting documentation should be sent by the investigator on an ongoing basis to appropriate staff.

1-0620 INVESTIGATIVE PRIORITIES (Continued)**1-0620**

Once the investigation is completed, the final report should be sent to the Regional Manager and Program Administrator within the timeframes established by the Regional Office/**Investigations Branch** Team. Refer to Evaluator Manual Complaints Section 3-2010, General Statement for definitions of Priority I – IV.

1-0630 CASE ACCEPTANCE**1-0630**

As a result of **Investigations Branch's** limited resources and the necessity that the Community Care Licensing Division investigate serious complaints in a timely manner, the following guidelines are established:

Investigations: **Investigations Branch** will accept requests for investigations when the investigator(s) assigned to the Regional Office area can reasonably expect to start the case within ten working days and complete the case within 90 (**calendar**) days.

Assignments: **Investigations Branch** will accept requests for an investigative assignment when the investigator(s) assigned to the Regional Office area can reasonably expect to complete the assignment within any required time limits.

Unlicensed Facility Investigations: **Investigations Branch** will accept requests for unlicensed facility investigations when efforts by Regional Office staff have failed to obtain compliance according to Section 1-0640.

When the Regional Office has more requests for services than **Investigations Branch** can reasonably complete in a timely manner, **Investigations Branch** will accept the higher priority case(s). When the **Investigations Branch** Supervising Investigator and the Regional Office staff must select between cases of equal priority, the following factors will be utilized in the selection process:

1. The possibility of continued abuse to clients and the severity of the injury(s).
2. The amount of involvement of local law enforcement or other investigative organizations in the case.
3. The requirement for a lengthy investigation.
4. The ability of the assigned Licensing Program Analyst to handle the investigation with case consultation from **Investigations Branch**.
5. Investigations which require travel outside the Regional Office boundaries.

The operational necessity of the Division may mandate deviance from this policy. Exceptions should be requested through the Program Administrator.

1-0640 UNLICENSED FACILITY COMPLAINT INVESTIGATIONS

1-0640

Rationale

Investigations Branch is responsible for the investigation of unlicensed child care facilities, residential care facilities for the elderly, residential care facilities for the chronically ill and community care facilities. The large number of unlicensed facilities in all categories makes it operationally impractical for **Investigations Branch** to accept every complaint of known or suspected unlicensed operation. Consequently, and in order to establish a system of priorities, Division policy defines specific Regional Office responsibilities to be met prior to acceptance by **Investigations Branch** of an unlicensed facility complaint.

Complaints and Facility Visit

The Regional Offices will receive and review all complaints of unlicensed facilities. If the complaint is routine, Regional Office staff will make the required ten-day visit. If the complaint indicates severe danger to clients or Priority I or II Referral, the Regional Office will immediately refer the complaint (*LIC 802*) and the **Investigations Branch Attachment for Unlicensed Referrals** (see *Evaluator Manual Section Appendix F*) to **Investigations Branch** who will assume the responsibility for the ten-day visit, unless other arrangements are made with Regional Office staff.

Facility Visit Results

1. **Unfounded:** If a review of all evidence obtained by the Licensing Program Analyst during the visit indicates an unfounded allegation, the Regional Office will close the case.
2. **Inconclusive:** If evidence obtained during the visit is inconclusive, the Regional Office should consult with **Investigations Branch** for possible assistance. This may include cases where the Licensing Program Analyst was denied entry.
3. **Substantiated/Routine:** If evidence obtained indicates substantiation of the allegation and no apparent danger to clients, the Licensing Program Analyst will issue a Notice in Violation of Law and requiring the operator to submit an application as soon as possible. For family child care homes, Licensing Program Analysts must wait 15 days after requesting the operator to submit an application before issuing a Notice in Violation of Law. Refer to *Evaluator Manual Section 1-1190* for notification procedures.
4. **Substantiated/Danger to Clients:** If evidence obtained by the Licensing Program Analyst during the visit indicates substantiation of the allegation and an apparent danger to the clients in care, the Licensing Program Analyst will issue a Notice in Violation of Law and refer the case to **Investigations Branch** as soon as possible. Refer to *Evaluator Manual Section 1-1190* for notification procedures. The Licensing Program Analyst shall also, when appropriate, notify local law enforcement.

1-0640 UNLICENSED FACILITY COMPLAINT INVESTIGATIONS
(Continued)**1-0640****Application**

1. **Application Granted:** If the Regional Office grants the operator a license, the case should be closed.
2. **Application Denied:** If the Regional Office denies the unlicensed operator's application, and the Regional Office has confirmed that the applicant has failed to remove clients within the required time frame the case should be referred to **Investigations Branch** as soon as possible. Refer to Evaluator Manual Section 1-1190 for notification procedures.
3. **No Application:** If no application has been received within 15 days, the Regional Office will refer the case to **Investigations Branch**. If the Regional Manager believes the unlicensed operator will comply with the law in the foreseeable future, the referral may be withheld at his or her discretion. Refer to Evaluator Manual Section 1-1190 for notification procedures.

1-0650 CASE REFERRALS FROM OUTSIDE SOURCES**1-0650**

When **Investigations Branch** receives complaints from sources other than through the Regional Offices, the complaints shall be referred to the appropriate Regional Office with the following expectations:

Law Enforcement Agencies

When **Investigations Branch** receives a complaint directly from a law Enforcement Agency, a service request will be prepared by **Investigations Branch** and the appropriate Regional Manager will be notified as soon as possible. An investigation will be initiated by either the Statewide Program Office or the Regional Office in accordance with established policy and procedures.

Deputy Director/Program Administrator

Requests for investigation from the Deputy Director or Program Administrator shall be documented on a service request by **Investigations Branch**. The Regional Manager will be notified at the direction of the Deputy Director and/or Program Administrator.

1-0700 CENTRAL OPERATIONS BRANCH, AUDIT SECTION**1-0700**

The Community Care Licensing Division, Audit Section receives requests for audit services from Regional Offices when there are financial concerns at all facility types except Group Homes or Foster Family Agencies. Financial/audit needs involving Group Homes and Foster Family Agencies are to be directed to the Foster Care Audits Branch in the Children and Family Services Division. You can use the same form (LIC 837) (Services Request for Audit Services) and process for requesting audit services from Foster Care Audits Branch. Forward Group Home and Foster Family Agency audit request to the Foster Care Audits Branch at Mail Station 19-24. All other audit requests are to be forwarded to the Central Operations Branch, Audit Section at Mail Station 19-49. Program Administrators and **Licensing Program** Managers are responsible for referring services requests for cases that meet Audit Section criteria.

The primary objectives of the Audit Section includes, but are not limited to ensuring that:

1. Client cash resources are handled, safeguarded and accounted for properly.
2. Applicants and licensees have a financial plan which ensures sufficient resources to meet operating costs.
3. Licensing staff make timely and informed audit-related decisions.

1-0710 AUDIT SERVICES**1-0710**

Audit services focus on the completion of audit casework in a timely manner, through the performance of trust and solvency audits conducted in accordance with Generally Accepted Governmental Auditing Standards. Providing these services in support of Regional Office functions is Audit Section's primary role. Within Community Care Licensing Division, Audit Section staff possess the necessary training and expertise to evaluate financial issues in detail.

Requests for services by the Regional Office at times exceed the Audit Section's capabilities due to limited staffing. When this occurs, the Audit Section attempts to address this problem by limiting the scope of services for particular audits by focusing solely on the primary issue identified in the LIC 837. These limited scope assignments are referred to as financial investigations for Audit Section inventory purposes. Financial investigations conform to Generally Accepted Governmental Auditing Standards.

Auditors may also provide opinions on audit-related issues via phone, fax and e-mail. This type of service is referred to as a consultation. All consultations are documented and inventoried. A copy of the completed consultation will be shared with the appropriate Regional Office. By conducting financial investigations and consultations, the Audit Section attempts to respond to specific Regional Office needs timely without having to conduct comprehensive trust or solvency audits.

1-0770 SOLVENCY AUDITS (Continued)**1-0770**

13. Complaints from commercial vendors about non-payment or late payment of bills.
14. Evidence of financial problems not specifically identified above that indicate that a licensee may not have an adequate financial plan.

1-0780 CONVEYANCE OF AUDIT FINDINGS**1-0780**

1. Upon completion of a trust or solvency audit, the Audit Section conveys the audit findings to the licensee/auditee via certified mail. Included in the certified mailing is a notice advising the licensee to provide, within 15 days of receipt, any additional information they believe could impact the draft audit findings. Based on the licensee's input, the draft findings may be amended.
2. After the licensee has been provided 15 days to respond to the audit findings, copies of the audit package are forwarded to the Central Operations Branch Chief, Policy and Audit Bureau Chief, Program Administrator, Regional Manager, **Licensing Program** Manager and the Licensing Program Analyst. A copy is also forwarded to Legal if an administrative case is ongoing. An internal memo is included in the audit package recommending that the audit findings be cited by the Regional Office via a *Facility Evaluation Report* (LIC 809). The LIC 809 referencing the audit findings is delivered to the licensee by the Licensing Program Analyst. Auditors will accompany the Licensing Program Analyst if their presence is determined to be necessary by the Audit Manager and the Program Administrator.
3. Audit findings are prepared in conformance with statutes and regulations requiring client confidentiality. Client names are referenced by number in the audit findings, which is accompanied by a *Confidential Names* (LIC 811) list.
4. Appeal rights for audit findings issued via LIC 809 are the same as other LIC 809 citations except that the auditor and/or Audit Manager will be present at the appeal meeting to support the audit findings and address licensee questions and objections, if any.
5. When audit findings are only regulatory in nature with no monetary differences, the corrective action instructions are normally straightforward and follow-up is provided by the Regional Office. When audit findings involve monetary differences, follow-up is the responsibility of the assigned auditor. It is the auditor's responsibility to keep Regional Office staff informed regarding the status of follow-up activities involving monetary differences.

1-1000 ADMINISTRATIVE ACTIONS OR OTHER LEGAL ACTIONS**1-1000**

(Continued)

In addition to the administrative actions listed above, immediate client relocation may be required when a licensing analyst or other representative of the Licensing Agency identifies a threat so severe that emergency personnel must be summoned while that licensing representative is at the facility. Examples include abandonment of a facility by the licensee, staff leaving clients without care and supervision, or; hazardous physical plant conditions which are so grossly dangerous that the health and safety of clients is in jeopardy.

It should be recognized that the need for client relocation may result directly from actions taken by the Licensing Agency or the Department, or indirectly from information shared by the Licensing Agency or Legal Division with other agencies. For instance, revocation of a license is a direct action taken by the Licensing Agency that may result in client relocation. Referral of an unlicensed situation to the local District Attorney or to the Attorney General is an indirect action that begins a process that may result in relocation of clients as well. In both situations, the Licensing Office will need to have prepared a Facility Closure Plan, including appropriate notifications to relatives and placement agencies.

1-1010 ADMINISTRATIVE ACTION AND OTHER LEGAL OPTIONS**1-1010**

In addition to the following procedures, refer to Evaluator Manual, Enforcement Actions Section 1-1190, Facility Closures: Notification and Client Relocation.

After the Licensing Office has utilized all available and appropriate enforcement actions, and the licensee is still failing to comply, administrative action is the next step in the process. There are no hard and fast rules as to what action is appropriate in a given case, and it is important to assess each case individually. What follows is a list of the primary options available to you in dealing with a non-compliant facility. Each option should be considered in light of the assessment factors found in Evaluator Manual, Enforcement Actions Section 1-0110.

Attorney Review. In cases where the Licensing Program Analyst, **Licensing Program Manager** and Regional Manager are unsure if the problems with a licensee are serious enough to warrant revocation of the license, or if you are unsure if the evidence you have is sufficient, or if there are other factors which make you unsure of the appropriateness of administrative action, discuss the case with the Licensing Office's assigned Legal Consultant. If there is still question as to what type of administrative action should be taken, if any, the case may be referred for the action you think is appropriate and "Attorney Review".

1-1010 ADMINISTRATIVE ACTION AND OTHER LEGAL OPTIONS**1-1010**

(Continued)

2. Failure or Refusal to Cease Operation After TSO or Final Decision and Order Revoking License Has Been Served :

If a facility continues to operate after a temporary suspension order or a final Decision and Order or a Stipulation and Order revoking the license has been served and has taken effect, contact the Licensing Attorney handling the case and/or the Licensing Office's assigned Legal Consultant immediately.

Operation after a Temporary Suspension Order or final order of revocation may be particularly compelling circumstances for the criminal prosecution approach, for two reasons: (1) It has been or can be proved that the facility is dangerous, and (2) The facility operator was already warned in writing that further operation is illegal, but chose to operate in defiance of the law.

Regional Office staff should follow referral procedures to **Investigations** Branch pertaining to unlicensed operations. Refer to Evaluator Manual, Enforcement Actions Section 1-0640 and Section 1-1190. Also see **Temporary Restraining Order**. A local Licensing Office should discuss with the Licensing Office's assigned Legal Consultant whether to ask a local prosecutor (district attorney, county counsel or city attorney) to seek an injunction against the facility. If this request is rejected, a Statement of Facts requesting an injunction should be prepared. The attorney assigned by the Legal Division will ask the Attorney General's office to seek the injunction. Contact the Licensing Office's assigned Legal Consultant regarding questions about injunctions. Regardless of the process used, further actions may result in facility closure and relocation of clients. If so, a Facility Closure Plan must be developed.

Administrative Actions against Other Persons. Administrative actions against persons who are not licensees, applicants or unlicensed facility operators are discussed in Evaluator Manual, Enforcement Actions Sections 1-1400 and following sections, Non-Licensee Administrative Actions. Employees are discussed in 1-1410, certified family home applicants and certificate of approval holders in 1-1430, and other adults in a facility in 1-1450.

1-1020 EVIDENCE AND DOCUMENTATION**1-1020**

The Licensing Program Analyst gathers the evidence necessary to refer a case for administrative action. [See Evaluator Manual Reference Material Complaints Section 3-2615 – Definition and Sources of Evidence]. The evidence is presented to the Legal Division in the form of licensing documents, medical and police reports, photographs, tapes, etc. The section below contains a brief discussion of the kinds of evidence which, if available, should be gathered and presented with the Statement of Facts, which is discussed in Evaluator Manual, Enforcement Actions Sections 1-1100 and 1-1130.

1-1020 EVIDENCE AND DOCUMENTATION (Continued)**1-1020**

- Omit older documents unless they have special relevance. For most facilities and facility types, this generally means more than three years old. For family child care homes and other facilities without extensive documentation, five years is generally more appropriate. Shorter or longer periods may be appropriate in particular cases. The following are examples of older documents that may be important for any facility:
 - (1) A prior substantiated or inconclusive complaint that is similar to a new substantiated or inconclusive complaint.
 - (2) A pattern and practice of being in violation of the same or similar requirements.
 - (3) Noncompliance conferences and informal meetings.
 - (4) Any questionable death or possibly inflicted serious injury.
 - (5) Documents that may shed light on current issues (e.g., who resided in a facility located in a private home on previous dates, previous evidence of dishonesty, etc.).
- Omit voluminous documents that are irrelevant to the case, such as sample menus submitted with an application or incident reports that are unconnected to any cited violation or other issue in the case.
- Omit duplicate copies of the same document.
- Remove Post-It notes or other obstructions before copying documents.
- Provide new LIS printouts (on the licensee/applicant, or in the case of an exclusion, on the employee/individual), even if the printout indicates no other associations.
- Check other associations to see if the person is still “active” and include these printouts. Also include older LIS printouts from the file.
- If there is an administrator, check LIS for administrator certification, and include the printout.
- Include relevant documents from other parts of Community Care Licensing Division, including but not limited to, Caregiver Background Check Bureau, **Investigations Branch**, Administrator Certification Section, Trustline, Audits, and/or other licensing offices.

1-1020 EVIDENCE AND DOCUMENTATION (Continued)

1-1020

Hospital and medical records. The medical records should be obtained whenever an incident in a facility has involved medical treatment or consultation. Physicians' offices and hospitals require a written authorization for release of information from the patient or responsible person or a subpoena duces tecum before they will release copies of records. A subpoena duces tecum Form LIC 967 is described in Evaluator Manual Reference Material Enforcement Section 1-1600.

A client, parent, or other responsible person will usually cooperate with an Licensing Program Analyst by signing the release. Make sure the release is dated. Obtain the records as soon after the release is signed as possible. Some hospitals will not honor releases more than three months after they are signed. Include the release in the Statement of Facts, and keep a copy of the release in the licensing file. A subpoena duces tecum will need to be used if a medical release is not obtained.

Juvenile Court Records. If it becomes necessary to obtain copies of any juvenile court records, California Department of Social Services legal staff or the Community Care Licensing Division, [Investigations Branch](#), will handle any request for such information. All requests should be made in accordance with the authority granted in the Welfare and Institutions Code Section 827.

Certified judgments of conviction and dockets. Rap sheets are not enough to prove that a person has been convicted of a crime. When it is a pertinent fact in the case that a person has been convicted, a certified copy of the judgment of conviction must be obtained from the Clerk of the court where the person was convicted. This court is identified on the rap sheet.

The Licensing Office should also request a certified copy of the complaint and court docket, if available, for the same conviction. The docket is a log of the court events in a particular case. It often contains helpful information such as the names of witnesses at the trial, terms of probation, and probation reports.

Call the Clerk of the court to obtain certified copies of the judgments and dockets. Identify yourself as a Licensing Program Analyst for a Licensing Agency. The Clerk should provide certified copies without charge, as State agencies are exempt from the copying and certification fees. Some courts may require a written request.

When certified court documents are received, send the actual certified documents with the Statement of Facts and keep copies in the file. If a conviction occurred many years ago, the county clerk may have destroyed the record of conviction. In such cases where obtaining this record is necessary for the case, contact the [Investigations Branch](#). County staff should contact their local District Attorney. They may be able to obtain the complaint, docket, and judgment of conviction from the Department of Justice, Bureau of Criminal Identification Division, or from the Department of Corrections, if the person in question is or was in prison.

**1-1025 EVIDENCE AND DOCUMENTATION:
SAMPLE DECLARATIONS (Continued)****1-1025**

THIS DECLARATION IS TO BE USED FOR INTERVIEWS OF THE VICTIM IN LIEU OF THE VICTIM EXECUTING HIS OR HER OWN DECLARATION. FOR YOUNG CHILDREN AND ADULTS WITH MENTAL IMPAIRMENTS, MAKE SURE YOUR DECLARATION CONTAINS INFORMATION THAT SHOWS THAT THE WITNESS KNOWS THAT THE WITNESS MUST TELL THE TRUTH AND THE WITNESS KNOWS WHAT THE TRUTH AND A LIE ARE, AND THE CONSEQUENCES OF NOT TELLING THE TRUTH. MAKE SURE THAT YOUR DECLARATION CONTAINS STATEMENTS AS TO THE REASONS WHY YOU BELIEVE THE VICTIM'S STATEMENT TO BE TRUSTWORTHY, AND MEASURES TAKEN TO ENSURE THE RELIABILITY OF THE VICTIM'S STATEMENT, SUCH AS ANOTHER PERSON SITTING IN ON THE INTERVIEW AND ASKING PROPER QUESTIONS.

DECLARATION OF [Name]

1. I have personal knowledge of the facts as stated below and if called as a witness I could competently testify thereto.

2. I am employed as a [Licensing Program Analyst/Licensing Program Manager, Investigator] by the ("California Department of Social Services"), [Work Address]. My duties include [list duties, such as the inspection of group and foster homes to determine the facilities are in compliance with applicable licensing laws and regulations.]

3. I have been employed by the California Department of Social Services for [list how long employed in the Department as job title, such as five years as a Licensing Program Analyst, 1990-1995, and from 1995 to the present as an investigator.] During my employment with the California Department of Social Services, I have inspected numerous facilities for compliance with licensing laws and regulations. [List all training you have had with witness interviews and number or frequency of interviews with children, developmentally or mentally disabled.]

4. [Detail here what prompted you to interview the victim, such as the California Department of Social Services received a complaint against the Smith Group Home that a staff member physically abused a client, or I received an investigation assignment request to interview the victim, John Smith.]

5. On [Date], I interviewed [name of victim] at [location]. Also present during my interview was [name]. The interview began at [time] and ended at [time]. During this interview, we discussed [list in generic terms what you discussed, such as the care provided at the foster home or how employee John Smith disciplined the victim.]

**1-1025 EVIDENCE AND DOCUMENTATION:
SAMPLE DECLARATIONS (Continued)****1-1025**

THIS DECLARATION IS TO BE USED FOR TAPED INTERVIEWS OF THE VICTIM CONDUCTED BY ANOTHER PERSON, SUCH AS IN A MULTI-DISCIPLINARY INTERVIEW CENTER, THAT YOU OBSERVED IN LIEU OF THE VICTIM EXECUTING HIS OR HER OWN DECLARATION OR YOU WRITING A FULL BLOWN DECLARATION AS TO THE VICTIM'S STATEMENTS. FOR YOUNG CHILDREN AND ADULTS WITH MENTAL IMPAIRMENTS, MAKE SURE THE TAPE CONTAINS INFORMATION THAT SHOWS THAT THE WITNESS KNOWS THAT THE WITNESS MUST TELL THE TRUTH AND THE WITNESS KNOWS WHAT THE TRUTH AND A LIE ARE, AND THE CONSEQUENCES OF NOT TELLING THE TRUTH. MAKE SURE THAT YOUR DECLARATION CONTAINS STATEMENTS AS TO THE REASONS WHY YOU BELIEVE THE VICTIM'S STATEMENT TO BE TRUSTWORTHY, AND MEASURES TAKEN TO ENSURE THE RELIABILITY OF THE VICTIM'S STATEMENT, SUCH AS ANOTHER PERSON SITTING IN ON THE INTERVIEW AND ASKING PROPER QUESTIONS.

DECLARATION OF [Name]

1. I have personal knowledge of the facts as stated below and if called as a witness I could competently testify thereto.

2. I am employed as a [Licensing Program Analyst/Licensing Program Manager, Investigator] by the ("California Department of Social Services"), [Work Address]. My duties include [list duties, such as the inspection of group and foster homes to determine the centers are in compliance with applicable licensing laws and regulations.]

3. I have been employed by the California Department of Social Services for [list how long employed in the Department as job title, such as five years as a Licensing Program Analyst, 1990-1995, and from 1995 to the present as an investigator.] During my employment with the California Department of Social Services, I have inspected numerous facilities for compliance with licensing laws and regulations. [List all training you have had with witness interviews and number or frequency of interviews with children, developmentally or mentally disabled.]

4. [Detail here what prompted the interview of the victim, such as the California Department of Social Services received a complaint against Smith Group Home that a staff member physically abused a client, or the investigating a child abuse complaint.]

5. On [Date], [name of person who conducted interview, job title, employer and address] interviewed [name of victim] at [location], which I observed. Also present during the interview was [name]. The interview began at [time] and ended at [time]. During this interview, [interview's name] and [victim's name] discussed [list in generic terms what was discussed, such as the care provided at the foster home or how employee John Smith disciplined the victim.]

**1-1025 EVIDENCE AND DOCUMENTATION:
SAMPLE DECLARATIONS (Continued)****1-1025**

THIS DECLARATION IS TO BE USED FOR TAPED INTERVIEWS OF THE VICTIM IN LIEU OF THE VICTIM EXECUTING HIS OR HER OWN DECLARATION OR YOU WRITING A FULL BLOWN DECLARATION AS TO THE VICTIM'S STATEMENTS. FOR YOUNG CHILDREN AND ADULTS WITH MENTAL IMPAIRMENTS, MAKE SURE THE TAPE CONTAINS INFORMATION THAT SHOWS THAT THE WITNESS KNOWS THAT THE WITNESS MUST TELL THE TRUTH AND THE WITNESS KNOWS WHAT THE TRUTH AND A LIE ARE, AND THE CONSEQUENCES OF NOT TELLING THE TRUTH. MAKE SURE THAT YOUR DECLARATION CONTAINS STATEMENTS AS TO THE REASONS WHY YOU BELIEVE THE VICTIM'S STATEMENT TO BE TRUSTWORTHY, AND MEASURES TAKEN TO ENSURE THE RELIABILITY OF THE VICTIM'S STATEMENT, SUCH AS ANOTHER PERSON SITTING IN ON THE INTERVIEW AND ASKING PROPER QUESTIONS.

DECLARATION OF [Name]

1. I have personal knowledge of the facts as stated below and if called as a witness I could competently testify thereto.

2. I am employed as a [Licensing Program Analyst/Licensing Program Manager, Investigator] by the ("California Department of Social Services"), [Work Address]. My duties include [list duties, such as the inspection of group and foster homes to determine the centers are in compliance with applicable licensing laws and regulations.]

3. I have been employed by the California Department of Social Services for [list how long employed in the Department as job title, such as five years as a Licensing Program Analyst, 1990-1995, and from 1995 to the present as an investigator.] During my employment with the California Department of Social Services, I have inspected numerous facility for compliance with licensing laws and regulations. [List all training you have had with witness interviews and number or frequency of interviews with children, developmentally or mentally disabled.]

4. [Detail here what prompted you to interview the victim, such as the California Department of Social Services received a complaint against Smith Group Home that a staff member physically abused a client, or I received an investigation assignment request to interview the victim, John Smith.]

5. On [Date], I interviewed [name of victim] at [location]. Also present during my interview was [name]. The interview began at [time] and ended at [time]. During this interview, we discussed [list in generic terms what you discussed, such as the care provided at the foster home or how employee John Smith disciplined the victim.]

1-1130 PREPARATION OF THE STATEMENT OF FACTS PACKAGE**1-1130**

The Statement of Facts format has been designed to make the Licensing Program Analyst's job, in preparing a case for legal action, easier and more efficient. Detailed instructions for completing each section of the form are contained in this section.

State Licensing Offices will use the LIC 9029A, Statement of Facts package, which has been converted to a Word document with locked data fields. The forms are in the Community Care Licensing Division Common Library. The LIC 9029A, Statement of Facts package is created and packaged by the Licensing Program Analyst and submitted to the Licensing **Program** Manager for approval. The Licensing **Program** Manager reviews, approves, and then forwards to the Regional Manager for approval. The Regional Manager or delegate e-mails the Statement of Facts to the Program Office or Assistant Program Administrator for final approval. The hard copy package is then mailed to the Legal Division. (See Section 1-1140 Routing the Statement of Facts.)

The **Licensing Program** Manager or Regional Manager should review the entire package when the Statement of Facts and supporting documents have been assembled, to insure completeness and appropriate organization prior to sending the package to the Legal Division. The LIC 9029B (Statement of Facts Preparation Checklist) is a tool to be used by the manager to assist in the review of the package. The LIC 9029B should then be attached to the package.

County Licensing Offices will use the form LIC 9029A Statement of Facts package. The Statement of Facts package will be reviewed and approved by the Program Manager. The LIC 9029B (Statement of Facts Preparation Checklist) is a tool to be used by the manager to assist in the review of the package. The LIC 9029B should then be attached to the package. Two copies of the entire Statement of Facts package are then forwarded to the appropriate Program county liaison for review and then approved by the Program Administrator or delegate. The Program county liaison will forward the Statement of Facts package to the Legal Division.

Statement of Facts Summary Sheet

This section of the Statement of Facts calls for data about the licensee and facility, the individual (for exclusions), the types of violations, the type of action requested, Regional Office name, Licensing Program Analyst's name and provides a section for approvals. All pertinent fields must be completed accurately. For immediate exclusions and telephone temporary suspension orders, the name of the attorney must be included. The Program Office enters the information from the Statement of Facts Summary Sheet into the Legal Case Tracking System which tracks the case from receipt in Legal to closure.

1-1130 PREPARATION OF THE STATEMENT OF FACTS PACKAGE 1-1130
(Continued)**Witnesses**

The witness list is perhaps the most important section of a Statement of Facts. There may be multiple violations in a facility, but without witnesses to testify about the violations, it will be impossible in most cases for the Legal Division to prepare pleadings or to win the case at the hearing. The Licensing Program Analyst should always be listed as a witness. If the **Investigations Branch** is involved, include the name of the investigator and supervisor.

It is important to provide complete identifying information on all witnesses such as date of birth, driver's license numbers, current work and residence addresses and phone numbers and names of next of kin; if possible. Unless the violations occurred immediately before the Statement of Facts, it is important to make an effort to verify or update the witnesses' information address, telephone numbers, etc.). The case should reach the Legal Division with up-to-date contact information for witnesses.

If the Licensing Program Analyst has some special information about a witness that would be helpful to the assigned Licensing Attorney, that information should be noted in the Comments Section for that witness. For example, the Licensing Program Analyst might indicate that a witness is hostile and probably unwilling to testify for the State, or that a witness may be too young or too disabled to serve as a witness. It is better to list the witness with these reservations noted than to omit the witness because there are problems. The Licensing Attorney assigned to the case is best able to determine the ability and willingness of witnesses to testify.

Other Forms Included in the Statement of Facts Package

Department of Justice Notification Form

Fill out the Department of Justice notification form, LIC 9011A, with all known information requested in the form, for any of the following: the licensee(s) or applicant(s), the excluded person, and/or the administrator against whom administrative action is being taken.

Complaint and Type A Violation Log

The LIC 9216 is a tool used to assist the Licensing Program Analyst, **Licensing Program Manager**, County Program Manager and Regional Manager to assess the seriousness of the case. The LPA should complete the LIC 9216 prior to writing the case summary. (Please see Case Summary.) The LIC 9216 is also useful to the assigned attorney and legal analyst as a quick reference. For Statement of Facts requesting Temporary Suspension Orders that are based on one incident, it may not be necessary to complete the LIC 9216. However, it is "best practice" to always complete the form.

1-1130 PREPARATION OF THE STATEMENT OF FACTS PACKAGE**1-1130**

(Continued)

Fill out the Complaint and Type A Violation Log (LIC 9216) with information from the case file. Record all Type A violations cited and any resulting action taken such as an Informal Meeting, Noncompliance Conference, Compliance Conference, or Administrative Action. Also record any inconclusive complaints of physical or sexual abuse and any others relevant to the action. Consult with the Licensing Office's assigned legal consultant if there are any questions about whether or not to include specific inconclusive complaints.

Organizing the Statement of Facts Package

See discussion in Section 1-1020 of what documents and other items of evidence should be provided with the Statement of Facts. It may be appropriate to retain bulky items of evidence (e.g., the stick with which children were disciplined) in the Regional Office, County Licensing Office or **Investigations Branch**, providing a description and perhaps a photograph of the item with the Statement of Facts. Note this under Special Issues/Pertinent Information. Remove duplicate documents from attachments sent to Legal Division.

CASE FILE INDEX

This index is a guide for organizing the case file documents that accompany a Statement of Facts which includes the Statement of Facts (LIC 9029A), the Statement of Facts Preparation Checklist (LIC 9029B), the Complaint & Type A Violation Log (LIC 9216), the County Licensing Administrative Action Personnel Flagging Attachment form (LIC 9011A) for facilities licensed by a county and the CDSS Licensing Administrative Action Personnel Flagging Attachment (LIC 9011B) for facilities licensed by the state. Documents should be separated into sections, using colored or preferably tabbed section dividers. Write the number and/or name of the section on the divider or tab. Because the documents that accompany a Statement of Facts vary widely, this index is a general guide to organizing materials by sections. The relevance and importance of documents, and the ease of locating documents in the file, should always be kept in mind.

Table of Contents

List the number and name of each section.

1. Attorney Consultation Documents

Include completed attorney consultation forms, memos and/or emails.

2. License(s) or Initial Application

In a license revocation case, include a copy of all licenses issued (current and expired or superseded), with the most recent on top, in this section. Be sure to include the most recent license, and that it reflects accurately the current capacity, restrictions, etc. In an application denial case, place the initial application form (LIC 200 or 283) here.

1-1150 AFTER THE STATEMENT OF FACTS REACHES LEGAL
(Continued)**1-1150**

1. Testimony of past and current employees, placement workers, clients.
2. Any other witnesses or documents which help substantiate the allegations in the Statement of Issues and/or Accusation.

The Licensing Attorney is permitted to have one licensing representative present and assist throughout the hearing. Most often, because of his or her extensive knowledge of the case, the Licensing Program Analyst or Investigator is chosen by the attorney to be present during the hearing.

In this role, the Licensing Program Analyst or Investigator will sit at the counsel table during the hearing. The Licensing Program Analyst or Investigator may, depending on the demands of the hearing, provide insights and information as witnesses testify, take notes, and find documents in the file as needed. The Licensing Program Analyst or Investigator may also be asked to arrange transportation for witnesses and to see that they are at the hearing in time to testify according to schedule. The Licensing Program Analyst's or Investigator's assistance at a hearing is invaluable to the attorney.

The Licensing Program Analyst or Investigator, in most administrative actions, will also serve as a key witness for the State. The results of the Licensing Program Analyst's and/or Investigator's conscientious observations and documentation are thereby placed before the Administrative Law Judge. The attorney will, in nearly every instance, prepare the Licensing Program Analyst and/or Investigator before the hearing and should answer any questions about the procedure. It is a good idea to attend a licensing hearing before being required to participate in one, to get a feel for the procedure and an idea of what it is like to be cross-examined.

The assigned attorney should promptly work out with the Regional Office and/or **Investigations Branch** who the representative will be, as this may affect the selection of a hearing date and the scheduling of other obligations.

1-1160 SETTLEMENTS, STIPULATIONS, PROBATION**1-1160**

In addition to the following procedures, refer to Section 1-1190, Facility Closures: Notification and Client Relocation.

Not all cases sent to the Legal Division for administrative action end up in hearing. In many cases, for many reasons, the parties to an administrative action may choose to negotiate a resolution (called a settlement) of a case rather than to litigate the case in front of an Administrative Law Judge. A settlement is almost always less time-consuming and less costly for all persons involved.

1-1160 SETTLEMENTS, STIPULATIONS, PROBATION (Continued)**1-1160**

If the licensee fails to comply with the terms of probation, the Licensing Office is responsible for referring the noncompliance for legal action. This referral is made in the same manner as an initial referral for license revocation. If the licensee does not comply with the conditions set forth in the Stipulation, the licensing attorney usually needs to prove only the violations of the specified condition(s). The stay of revocation is then set aside, and the revocation takes effect.

The licensing attorney will contact the Licensing Program Manager, Regional Manager and Assistant Program Administrator or Program Administrator or delegate for input on a given settlement proposal. Any information or opinions regarding the settlement that is being proposed should be conveyed by the management team to the licensing attorney. These opinions will figure prominently in the final decision.

The licensing attorney will contact the manager of the Administrator Certification Section whenever a settlement proposal involves the exclusion or decertification of an administrator of an Adult Residential Facility, Group Home, or Residential Care Facility for the Elderly, and settlement proposals related to the revocation of Department approval of vendors that provide administrator certification training.

Cases involving any of the items listed below must be reviewed by a Deputy General Counsel. Without substantial justification, the Legal Division will not approve a settlement.

1. Exclusion of a spouse.
2. Exclusion of a minor or dependent child, grandchild or relative.
3. Exclusion of anyone who has molested or abused a person.
4. Surrenders.
5. Exclusion of a licensee from the operation of the facility or client contact.
6. Exclusion of a corporate officer, board member or other management person from the facility or client contact while they retain their business, professional or personal relationship with the facility.
7. Proposals that include duplicate licensees (e.g. Community Care Licensing Division and California Department of Public Health licenses for the same facility).
8. Care beyond the regulations.
9. A proposal where there is not a reasonable chance that the licensee will successfully complete probation.

1-1160 SETTLEMENTS, STIPULATIONS, PROBATION (Continued)

1-1160

10. Any proposal that allows a sex molester to continue in operation, even if it means going to hearing and losing.
11. Settlements that permit a facility whose license has been temporary suspension ordered to continue in operation.
12. Revocations where the respondent can reapply in less than two years.
13. A Stipulation that is used as a way to avoid hearing preparation.

Family Child Care Home Settlements – Spouse

The following clarifies the policy related to settlement proposals when the Department has caused to exclude the family child care home licensee's spouse, but is willing to allow the licensee to maintain the license; and when the family child care home licensee's spouse has a denied criminal record exemption.

The Department will not entertain any probation term or condition in settlements (stipulations) where there is a condition that excludes the spouse of a family child care home licensee from his or her residence only during day care hours or at any time children are in care.

Settlement to Exclude Spouse

If the licensee can prove, through documentary evidence, that the licensee has filed for divorce (petition for dissolution of marriage), the spouse has been removed from the lease or has relinquished his/her property rights, and the spouse has moved from the facility and has established a legal residence elsewhere, a settlement that includes an exclusion of the spouse may be considered in order for the licensee to maintain a license, when all three of the above conditions are met.

In such settlements, the licensee will be required to comply with parent notification requirements associated with any exclusion.

Conditional Exemption-Spouse

When determining whether or not a settlement with a conditional exemption is feasible, assess the risk the person (spouse) with the denied exemption would present to children in care. If there is a risk, seek an administrative action to revoke the license. If it is determined that the presence of the person in the home does not pose a risk to children in care, a settlement with a conditional exemption may be considered.

Conditions on the exemption must include (but are not limited to): prohibitions against any involvement in the operation of the day care, any responsibility for care and supervision of children in care at any time, and being left alone with children in care.

1-1180 OPERATION AFTER REVOCATION (Continued)**1-1180**

A record of licensing revocations is kept by the Department of Justice. This information is obtained from the LIC 9011A, Department of Justice Notification, which is completed by the Licensing Program Analyst and sent to the Legal Division along with the Statement of Facts. When fingerprints are submitted for a check of a criminal record, the Department of Justice notifies the California Department of Social Services if a revocation is on the record. When a prior revocation is noted as a result of a fingerprint check, the former Licensing Agency and the Legal Division should be contacted for further information before a decision is made on the license or employment.

1-1190 FACILITY CLOSURES, NOTIFICATION AND CLIENT RELOCATION**1-1190**

The Licensing Agency recognizes that relocation of clients, while necessary to assure their health and safety, has an enormous impact on these clients, their families and authorized representatives, local protective agencies and the community as a whole. However, if a care provider is operating in a manner that places clients in imminent danger or subjects them to continual poor care, the Licensing Agency becomes responsible for taking action that may directly or indirectly result in facility closure. Abrupt closures of care facilities have a dramatic impact on clients, family members, care providers, placement and protective agencies and on licensing staff. It is the policy of the Community Care Licensing Division that, in those cases where facility closure is identified as a possible outcome of any licensing action, clients and their relatives and authorized representatives will be provided as much advance notice as possible. In addition, it remains the policy of the Community Care Licensing Division that appropriate placement and protective agencies will be involved in the planning stages that precede any administrative actions taken that could result in facility closure.

I. PLANNING FOR FACILITY CLOSURE AND CLIENT RELOCATION

Planning for any administrative actions that will result in facility closures and client relocation, including advance notification of relatives and authorized representatives, is an integral part of the Licensing Agency's responsibility to ensure the health and safety of persons in out of home care. Inadequate planning can create transfer trauma that is every bit as dangerous as the situation being remedied.

A. Development of Facility Closure Plan

With the exception of situations where the first course of action is contacting emergency response personnel such as law enforcement, Adult Protective Services, or medical personnel, it is the Department's policy that no actions which result in the need for client relocation will be carried out unless and until a Facility Closure Plan has been developed. The plan will include advance notification to relatives and authorized representatives.

**1-1190 FACILITY CLOSURES, NOTIFICATION AND CLIENT
RELOCATION (Continued)****1-1190**

If licensing staff identify a threat so severe that emergency personnel must be summoned while licensing staff is at the facility, advance notification will not be possible.

- Immediately notify the **Licensing Program** Manager or Regional Manager. The Regional Manager notifies the Assistant Program Administrator or Program Administrator, who notifies the Deputy Director. The Deputy Director's office notifies the Director of the Department.
- Notify known relatives or authorized representatives as soon as the situation is stabilized and clients are out of danger.
- If the situation warrants, local elected officials and legislative representatives will be notified when the situation is stable.
- The Regional Manager notifies the Department's Public Information Officer if there has been or there is an expectation of press contact.

Regional Offices are responsible for developing a Facility Closure Plan as soon as information is received that indicates that an operating facility with clients in care is subject to closure. The planning process begins as soon as the Regional Manager learns that an operating facility with clients in care is subject to closure. The Regional Manager will contact placement and other appropriate agencies immediately to jointly plan for a smooth relocation of residents. The plan needs to be completed as soon as possible after it is confirmed that the facility closure will occur.

The plan will identify the agencies and individuals that are responsible for clients in care, timeframes for notification, arrangements for assisting with relocation or finding alternative care arrangements, and efforts to minimize trauma to the clients. Parents, placement agencies and other responsible parties will be included in the development and implementation of the Plan as specified below. Other agencies such as law enforcement, medical consultants and County Health Departments may also be included as appropriate.

B. Coordination with Placement Agencies

Coordination with other agencies and affected parties can minimize transfer trauma in the event of a facility closure and relocation. Prior to closing a facility, the Regional Office will determine which agencies need to be contacted and the resources needed for relocation. This will vary with facility type, payment systems, and whether or not the facility to be closed has clients placed through a placement agency. The need to maintain confidentiality of an impending closure should be balanced with the need for advance notice to agencies that will be seeking other placements for the residents.

**1-1190 FACILITY CLOSURES, NOTIFICATION AND CLIENT
RELOCATION (Continued)****1-1190**

Each Regional Office shall maintain a current list of possible agencies that will assist in relocation. (See Section 1-1245, Agency Resource List and Section 1-1260, Coordination with Placement Agencies.)

C. Notification Requirements

A primary component of the Facility Relocation Plan is the provision of notification of the impending facility closure and the need to relocate clients to placement agencies, family members, and other affected agencies and individuals. It is the policy of the Community Care Licensing Division that as much advance notice as possible be provided to facilitate the relocation process and to minimize disruption of the lives of clients and their families. The established minimum timeframes for this notification are dependent on the types of action being taken and the facility type. Minimum timeframes and procedures for notification are described below.

II. ACTIONS THAT MAY REQUIRE CLIENT RELOCATION**A. Emergency Relocations**

If licensing staff identify a threat so severe that emergency personnel must be summoned while licensing staff is at the facility, advance notification will not be possible.

1. Immediately notify Program Administrator, Deputy Director and Director.
2. Notify known relatives or authorized representatives as soon as the situation is stabilized and clients are out of danger.
3. If the situation warrants, local elected officials and legislative representatives will be notified when the situation is stable.
4. The Regional Manager notifies the Department Public Information Office if there has been or there is an expectation of press contact.

B. Temporary Suspension Orders**1. Planning for Relocations****Child Care**

- Public Resource and Referral Agencies: The Public Resource and Referral Agency will be included in the development of the Facility Closure Plan. The local Public Resource and Referral Agency will be notified at least the day before the temporary suspension order is to be served. Additional notice should be provided for child care centers.

**1-1190 FACILITY CLOSURES, NOTIFICATION AND CLIENT
RELOCATION (Continued)****1-1190**

- At the time of service, the letter to parents will identify the name and telephone number of the resource and referral staff who will be available to assist in finding alternative child care.

Adult/Elderly Care

- All agencies responsible for the placement of clients in care will be included in the development of the Facility Closure Plan. Such agencies may include, but are not limited to Public Guardian/Conservator, Regional Center, and County Mental Health, as appropriate. In addition, the Long-term Care Ombudsman and Adult Protective Services Agency will be included in the development of the Plan.

Children's Residential Care

- All agencies responsible for the placement of clients in care will be included in the development of the Facility Closure Plan. Such agencies may include, but are not limited to, County Probation, County Social Services, Regional Center, and County Mental Health.
- When private placements are made by family members, licensing staff will notify them at least 24 hours prior to serving the temporary suspension order.

2. Notifying Family Members

Plans for advance notification to family members should be included in the Facility Closure Plan developed by the Regional Office.

Child Care Facilities

- Parents and/or responsible party: The temporary suspension order will be effective at the close of business on the day following service. Parents/responsible parties will be notified at the time they pick up children on the day the temporary suspension order is served. They will be provided a copy of the Accusation and a letter describing the process in more detail. The letter will also provide information about child care resource and referral services. Parents not notified in person will be called the evening the temporary suspension order is served and sent a copy of the Accusation and letter. (See sample letter)

**1-1190 FACILITY CLOSURES, NOTIFICATION AND CLIENT
RELOCATION (Continued)****1-1190**

- If possible, the temporary suspension order should be served on Thursday to maximize the number of days available to parents to find alternative child care arrangements except in extenuating circumstances.

Residential Facilities

- The Regional Office will ensure that as much notice as possible is provided to family members based on the specific circumstances of the case. In all cases, family members will be notified at least three (3) days before the temporary suspension order is effective.

Options for providing advance notice to family members are listed below. These options are not all inclusive. The decision should be based on such factors as the size of the facility, client type, placement options, etc. The option selected should be discussed in the Facility Closure Plan developed by the Regional Office.

Option A - 24 hours notice: Notify family at time of temporary suspension order service; temporary suspension order effective 24 hours after service.

Option B - 24 hour notice: Notify 24 hours prior to serving temporary suspension order; temporary suspension order effective upon service.

Option C - 48 hours notice: Notify family 24 hours before service; temporary suspension order effective 24 hours after service.

- Family members will be contacted by telephone followed by a letter and copy of the Accusation. If family members can come to the facility, they will be given a copy of the letter, and can assist their relative.
- Clients who are competent or who do not have an identified authorized representative will be notified at least 24 hours prior to the effective date of the facility closure. For clients who are not competent and have a responsible representative, notification will be left to the discretion of the representative or placement agency.

3. Notifying other Agencies

The following agencies do not need to be involved in the Facility Closure Plan, but must be notified as soon as the temporary suspension order is served.

**1-1190 FACILITY CLOSURES, NOTIFICATION AND CLIENT
RELOCATION (Continued)****1-1190**

- Child Care: The California Department of Education/Child Development Division and Child Care Food Program; and local County Welfare Department will be notified as soon as possible within 24 hours of the time of service.
- Adult/Elderly Care: State Department of Health Services - Licensing and Certification, County Medi-Cal, and the Social Security Administration, will be notified as soon as possible within 24 hours of the time of service.
- Children's Residential: The California Department of Social Services Foster Care Branch and the California Department of Education will be notified as soon as possible within 24 hours of the time of service.
- Developmentally Disabled: the California Department of Developmental Services will be notified within 24 hours of the time of service.

4. General Notification in all Cases

- The local elected officials and legislative representatives: After the Deputy has signed the Temporary Suspension Order local legislative offices will be notified on the same day that notice is provided to family members and other responsible parties. Notice will be provided by telephone call, followed by a fax of the letter to responsible representatives. A copy of the Accusation will be mailed within the next 24 hours. Consideration should also be given to the need to provide notification to other elected officials including mayors, city council members, and members of Boards of Supervisors. The Regional Office will develop and maintain current lists of local officials and legislative representatives for use in notification during service of a temporary suspension order.
- Public Information Office: The Regional Manager will notify the Department's Public Information Office at the time the temporary suspension order is approved.

C. Actions Against Unlicensed Facilities

- Except for family child care homes, a Notice of Operation in Violation of Law must be issued to the facility operator at the time the unlicensed operation is verified. For family child care homes, the care provider is advised in a licensing field report of the need to apply for a license. The facility has 15 days to submit an application or cease operating.

**1-1190 FACILITY CLOSURES, NOTIFICATION AND CLIENT
RELOCATION (Continued)****1-1190**

If the provider does not cease operating and an application is not received on the 16th day, or the application is denied, a second Notice of Operation in Violation of Law should be sent (initial Notice of Operation in Violation of Law for family child care homes) to the facility.

- If imminent danger is identified in an unlicensed facility, the Regional Office will contact the Legal Division to determine if a temporary restraining order or injunction should be sought. The Regional Office will also inform placement agencies and Protective Services Agencies that the facility is unlicensed so that the agencies can determine if clients in care should remain in the unlicensed environment. The decision to seek a temporary restraining order or injunction, or assist a placement or protective agency to remove clients from an unlicensed facility is made by the Regional Manager in consultation with the Assistant Program Administrator or Program Administrator and Deputy Director, and the Legal Division.
- Unlicensed care providers may be unwilling or unable to share information regarding contacts for responsible parties for the clients in care. Licensing staff will request that contact information be provided and contact the Legal Division if the care provider refuses to cooperate.

1. Notifying Family Members/Placement Agencies

- Within one day of issuing the Notice of Operation in Violation of Law, copies of the Notice of Operation in Violation of Law and an accompanying letter will be sent to identified responsible parties and clients. For family child care homes, parents will be sent a copy of the field report and an accompanying letter. (See sample letter).
- The Regional Office will develop a Facility Closure Plan and contact all responsible parties and other entities identified in the Plan 48 hours prior to referring to the Attorney General or the District Attorney or any other designated local authority for an injunction and/or criminal prosecution. (See sample letter).

2. General Notifications

- California Department of Social Services Public Information Office: The Regional Manager notifies the Public Information Office at the time when decision is made to seek an injunction or temporary restraining order.

**1-1190 FACILITY CLOSURES, NOTIFICATION AND CLIENT
RELOCATION (Continued)****1-1190**

- Local elected officials and legislative representatives: Call on the day that family members and other responsible parties are notified. Forward a copy of the Notice of Operation in Violation of Law and letter sent to responsible parties when a decision is made to seek an injunction or temporary restraining order.

D. Decision and Order Resulting from Revocation

Decisions and orders will become effective ten days from the date they are signed. The Legal Division will notify licensing offices when a proposed Administrative Law Judge decision that will result in facility closure is received from the Office of Administrative Hearings. This is to allow time for offices to verify that the facility is still operating, to develop a closure plan, and to update contact lists.

1. Notifying Family Members/Placement Agencies

The Legal Division will also contact the Regional Office when the Decision and Order has been signed. After such notification is received, the Regional Office will begin notifying responsible parties as follows:

- Facility in operation with clients in care: When the Regional Office receives the signed Decision and Order, they shall immediately begin the notification process. At a minimum, notification will include agencies and individuals identified in the Facility Closure Plan. (See sample letters)
- Facility in operation, no clients in care: The Regional Office will identify the appropriate entities to be notified based on the situation. At a minimum, for adult/elderly facilities, the Ombudsman and Adult Protective Services will be notified.

2. Notifying other Agencies

The following agencies do not need to be involved in the Facility Closure Plan, but will be notified as soon as any action is taken.

- Child Care: The California Department of Education/Child Development Division and Child Care Food Program; and local County Welfare Department will be notified as soon as possible within 24 hours of the time of service.
- Adult/Elderly Care: State Department of Health Services - Licensing and Certification, County Medi-Cal, and the Social Security Administration, will be notified as soon as possible within 24 hours of the time of service.

**1-1190 FACILITY CLOSURES, NOTIFICATION AND CLIENT
RELOCATION (Continued)****1-1190**

- Children's Residential: The California Department of Social Services Foster Care Branch Chief and the California Department of Education will be notified as soon as possible within 24 hours of the time of service.

3. General Notifications

- Local elected officials and legislative representatives: Call on the day that family members and responsible representatives are notified. Forward a copy of the proposed Decision and Order and letter sent to responsible parties, upon receiving notice that the order has been signed.
- Public Information Office: Regional Manager notifies the Department's Public Information Office when the Decision and Order is signed.

E. Decision and Order Resulting from Stipulated Agreements

Decisions and orders resulting from stipulated agreements that involve closure of a facility will become effective on a specific date identified in the settlement. The effective date will be no earlier than ten days after the Decision and Order is signed. This will allow time for offices to verify that the facility is still operating, to develop a closure plan, and to update contact lists.

1. Notifying Family Members/Placement Agencies

The Legal Division will contact the Regional Office when the Decision and Order has been signed. The Regional Office will then begin notifying responsible parties as follows:

- Facility in operation with clients in care: At the time the Regional Office receives the notice that the Decision and Order has been signed, they shall immediately begin the notification process. At a minimum, notification should include agencies and individuals identified in the Facility Closure Plan. A sample letter has been developed for this purpose.
- Facility in operation, no clients in care: the Regional Office should identify the appropriate entities to be notified based on the situation. At a minimum, for adult/elderly facilities, the Ombudsman and Adult Protective Services should be notified.

2. Notifying other Agencies

The following agencies do not need to be involved in the Facility Closure Plan, but require notification upon completion of any action that is taken.

**1-1190 FACILITY CLOSURES: NOTIFICATION AND CLIENT
RELOCATION (Continued)****1-1190**

- Child Care: The California Department of Education/Child Development Division and Child Care Food Program; and local County Welfare Department will be notified as soon as possible within 24 hours of the time of service.
- Adult/Elderly Care: State Department of Health Services - Licensing and Certification, County Medi-Cal, and the Social Security Administration, will be notified as soon as possible within 24 hours of the time of service.
- Children's Residential: The California Department of Social Services Foster Care Branch Chief and the California Department of Education will be notified as soon as possible within 24 hours of the time of service.

3. General Notifications

- Local elected officials and legislative representatives: Call on the day that family members and responsible representatives are notified. Forward a copy of the proposed Decision and Order and letter sent to responsible parties, upon receiving notice that the order has been signed.
- California Department of Social Services Public Information Office: Regional Manager notifies Public Information Office at the time the Decision and Order is signed.

III. GENERAL RELOCATION PROCEDURES**A. Scheduling of Effective Date for Facility Closure:**

The effective date for licensing action shall be scheduled to allow as much time as possible for an orderly relocation of clients with minimal disruption for the clients and their family members. In all cases, the effective date for closure of a facility shall be scheduled no earlier than 24 hours after notice is provided to placement agencies, clients and family members. Normally, this will mean that even in the case of a temporary suspension order, the facility will be authorized to continue operation for at least 24 hours after such notification is provided. In some cases involving a temporary suspension order, notification to family members may occur prior to the date of service. In such cases, the action to close the facility can be effective on the date of service.

**1-1190 FACILITY CLOSURES: NOTIFICATION AND CLIENT
RELOCATION (Continued)****1-1190**

If there is reason to believe that any client who was the subject of the investigation is likely to be subject to physical harm by remaining in the facility for the additional time, it may be appropriate to contact representatives for that client earlier to provide for their relocation on the date of service.

B. Staffing the Relocation Plan:

In all cases, the Regional Manager or Program Administrator (or county equivalent) will be present at the facility during the relocation process, and will be responsible for coordinating all activities and answering any media contacts that may occur. In the case of temporary suspension orders, this will mean that the Regional Manager must be present at the facility on the date of service of the temporary suspension order and the day clients are relocated.

Licensing staff shall ensure that sufficient representatives from placement and Protective Services Agencies, as well as clients' authorized representatives, are present at the facility and who will be in charge of relocation. Arrangements shall be made to ensure that sufficient licensing staff, including Regional Office staff and Investigators, are present to provide appropriate notification and to assist with relocation. Law enforcement, county health department officials and medical personnel may also be scheduled to be available depending on the circumstances of the action.

SAMPLE LETTERS OF NOTIFICATION

The letters contained in this section are meant to be sample letters. Actual letters will contain information on the specific actions to be taken and will need to be modified for a specific audience. Keep in mind that any letters sent to the general public will often be shared with local and State legislative representatives as well as the media. A well written letter meeting the requirements below will continue to send a message that the Licensing Agency is acting in a responsible and respectful manner. Letters should be developed based on the following guidelines:

- All letters must convey the supportive tone and the “non-bureaucratic” style of the sample letters.
- All letters to persons in care, parents or other family members must start with a brief description of the role of the Licensing Agency.
- In describing the action to be taken, use terms that can be easily understood.

1-1200 TEMPORARY SUSPENSION ORDERS**1-1200**

In addition to the following procedures, refer to Section 1-1190, Facility Closures: Notification and Client Relocation.

A temporary suspension order is an order signed by a Deputy Director, usually the Deputy Director of Licensing, or someone delegated by the Deputy Director of Licensing, suspending a license to protect residents or clients from physical or mental abuse, abandonment or any other substantial threat to their health and safety. Temporary suspension orders involving children's residential facilities should also be approved by the Children and Family Services Division. Refer to Section 3-2635 of the Complaint Section for details.

Temporary suspension orders are pursued in conjunction with revocation actions. In a straight revocation action the licensee has the legal right to continue to operate.

A temporary suspension order is sought when an immediate health or safety hazard exists in a facility and the operation must be closed immediately. The temporary suspension order may be as a consequence of an investigation report or result from an action taken collaterally such as the denial of a fire clearance. The temporary suspension order will specify an effective date when the operation of the facility must cease.

1-1205 NECESSITY FOR A TEMPORARY SUSPENSION ORDER**1-1205**

In addition to the following procedures, refer to Section 1-1190, Facility Closures: Notification and Client Relocation.

Prior to requesting a temporary suspension order, the Licensing Agency shall consider the necessity of such an action based on Health and Safety Code, Sections 1550, 1569.50, 1568.082 and 1596.885. If you are reading this section because you have a facility problem and are wondering whether a temporary suspension order is appropriate, discuss the case with your **Licensing Program** Manager, Regional Manager and the Licensing Office's assigned Legal Consultant. Counties will also consult with their Program County Liaison.

Factors to be considered in assessing whether an immediate substantial health or safety risk exists, include but are not limited to:

1. Is there danger to the health, welfare or safety of the clients in care? If so, a temporary suspension order recommendation may be appropriate.
 - a. Is the danger serious?

1-1205 NECESSITY FOR A TEMPORARY SUSPENSION ORDER (Continued)**1-1205**

Allegations, which require additional investigation, should be referred by Regional Offices to the **Investigations Branch** (Refer to Section 1-0600). Depending upon the nature of the allegation, **Investigations Branch** and the Regional Office may work in conjunction to develop the essential documents for a temporary suspension order and revocation.

When it is determined that a temporary suspension order may be appropriate, see Section 1-1211 Temporary Suspension Order process

1-1210 TELEPHONE TEMPORARY SUSPENSION ORDERS**1-1210**

In addition to the following procedures, refer to Section 1-1190, Facility Closures: Notification and Client Relocation.

A telephone temporary suspension order is a method to refer a case immediately to the Department's Legal Division when expedited legal services or investigative consultation is required in cases involving major and immediate risks to clients in care. The decision to request a telephone temporary suspension order is made by the Assistant Program Administrator or Program Administrator or delegate in consultation with the Deputy General Counsel or delegate assigned to the particular Program..

A telephone temporary suspension order is warranted under the following circumstance:

1. There is a major and immediate risk to clients in care and the circumstances of the case are urgent enough to warrant an immediate mobilization of the Department's temporary suspension order authority.

The Licensing Office's assigned Legal Consultant should be alerted to the possibility of a telephone temporary suspension order as soon as possible or whenever there is a major investigation in process which may result in a temporary suspension order being required and the services of an attorney would assist in the resolution of the investigation.

The determination of whether a case is appropriate for a telephone temporary suspension order is made on a case-by-case basis. Factors to be considered:

1. Is the alleged perpetrator or dangerous condition still present in the home or facility?
2. How provable is the allegation now?
3. Will more time for an investigation improve the ability of the Department to prove the allegation?

1-1210 TELEPHONE TEMPORARY SUSPENSION ORDERS (Continued) 1-1210

When referring the matter for a telephone temporary suspension order, the Regional Office staff should be prepared to discuss the alleged violations and evidence establishing the risk of harm; to identify the names and locations of key witnesses; to summarize the history of the facility and the licensee; and to estimate when the Regional Office can serve the temporary suspension order and assist in its implementation. For community care facilities, must be able to estimate probability of obtaining evidence as needed for the interim Hearing (See Section 1-1215). **DO NOT DELAY MAKING THE TELEPHONE TEMPORARY SUSPENSION ORDER REFERRAL BECAUSE YOU HAVE NOT OBTAINED DECLARATIONS.** The necessity of declarations can be discussed with the assigned attorney. After the telephone temporary suspension order is approved (See Section 1-1211 Temporary Suspension Order Process) and served, the Licensing Office must prepare and submit a Statement of Facts within two working days of telephone approval to complete the record and to advise the Assistant Program Administrator or Program Administrator and the Legal Division of any other relevant information.

1-1211 TEMPORARY SUSPENSION ORDER PROCESS 1-1211

In addition to the following procedures, refer to Section 1-1190, Facility Closures: Notification and Client Relocation.

The following procedures must be used when a temporary suspension order is appropriate:

1. The Licensing Program Analyst and the **Licensing Program** Manager are responsible for bringing to the attention of the Regional Manager all cases that may warrant a temporary suspension order.
2. The Regional Manager will consult with the Licensing Office's assigned legal consultant on whether the case is appropriate for a temporary suspension order.
3. Counties must consult with their assigned Legal Consultant and the Program County Liaison regarding a possible temporary suspension order.
4. See Section 1-1140 Routing the Statement of Facts.

TELEPHONE TEMPORARY SUSPENSION ORDER PROCESS

In addition to the above, the following steps apply to telephone temporary suspension orders:

1-1211 TEMPORARY SUSPENSION ORDER PROCESS (Continued)**1-1211**

5. For telephone temporary suspension orders, the Regional Manager must discuss the matter with the Assistant Program Administrator or Program Administrator or delegate and obtain the approval to move forward with the process.
6. If it is agreed to handle the case as a telephone temporary suspension order:
 - a. The Assistant Program Administrator or Program Administrator or delegate must contact the Deputy General Counsel or delegate for the Program. The facts and evidence are discussed. Additional evidence that is needed will be identified.
 1. The Regional or County Office's assigned Legal Consultant may also brief the Deputy General Counsel or delegate.
 - b. The Deputy General Counsel or delegate immediately assigns an attorney and informs the Regional Manager of the attorney assigned to prosecute the case.
 - c. The Regional Manager contacts the Statewide Program Office to obtain a legal case number and immediately provides the number to the attorney assigned to prosecute the case.
7. The attorney assigned will immediately contact the Licensing staff assigned to the case.
8. The Licensing Office staff provides required documentation to the assigned attorney by FAX or hand delivery depending on the situation. Licensing staff will check the Licensing Information System and assure that all appropriate licenses of the licensees, regardless of the region or county where located, are assigned legal case numbers. Statewide Program Office staff will check the Licensing Information System for county cases. A completed **Investigations Branch** report is not necessary prior to service of a temporary suspension order. This is a team effort, so it is important that Licensing Office staff are available to work on the case.
9. Preparation of the Statement of Facts for a temporary suspension order shall have top priority for all Community Care Licensing Division staff. For a telephone temporary suspension order, the Licensing Program Analyst prepares a Statement of Facts within two working days of telephone approval by the Assistant Program Administrator or Program Administrator or delegate. See Section 1-1140 Routing the statement of facts package.

1-1240 TEMPORARY SUSPENSION ORDER MASTER KIT (Continued) 1-1240

15. Name tags labels and receipts.
16. Boxes for packaging records/personal items of residents.
17. Kleenex and toilet paper.

1-1245 AGENCY RESOURCE LIST 1-1245

In addition to the following procedures, refer to Section 1-1190, Facility Closures: Notification and Client Relocation.

The Regional Office must determine the agency resources needed for relocation. Depending upon the payment status (SSI or private pay), placement agency or lack of and conditions of the residents, the Regional Office will need to call upon other agencies to assist in the relocation process. The purpose of coordination is to keep other entities informed, as a temporary suspension order may effect the agency's operation and to obtain assistance in placing clients, thereby reducing transfer trauma and adverse affect on families of clients in care.

Each Regional Office should create and maintain a list of possible resources. Sections 1-1260 and 1-1265 describe further how these agencies may be utilized and why coordination is important.

The following list should be used as a basis for creating an individual master list in each Regional Office:

- **County Department of Public Social Services or County Welfare Department Management:** This contact should be made by the **Licensing Program** Manager or Regional Manager, seeking a commitment of cooperation with Regional Office staff. This agency may be able to facilitate emergency placement services or provide staff to assist in the relocation process.
- **Adult Protective Services:** The extent of Adult Protective Services involvement may vary by county depending on staff resources. However, Adult Protective Services should be contacted and included whenever possible to facilitate placement for those residents meeting Adult Protective Services criteria, who have no other case manager.
- **County Medi-Cal Eligibility Unit:** If a resident does not already have Medi-Cal and needs medical care, this unit may be able to expedite the process.
- **Public Guardian/Conservator's Office:** These agencies sometimes place residents in community care facilities or residential care facilities for the elderly or have responsibility for handling residents' money. There may be residents in the facility who have no responsible parties but are not competent to make decisions regarding their care. The Guardian or Conservator's office may be able to assist with those residents.

1-1265 TEMPORARY SUSPENSION ORDER TEAM**1-1265**

In addition to the following procedures, refer to Section 1-1190, Facility Closures: Notification and Client Relocation.

Although some tasks may be delegated to other agencies, the Regional Office has the ultimate responsibility for the temporary suspension order service and relocation process. To ensure that the process operates smoothly and efficiently, the Regional Office should develop a temporary suspension order team and schedule a planning meeting.

The size of the team will be determined by the size of the facility and the number of residents. The team should consist of the following:

- The Regional Manager or Program Administrator, or county equivalent.
- The Licensing Program Analyst assigned to the facility.
- The **Licensing Program** Manager assigned to the facility.
- Other experienced Licensing Program Analysts and support staff.
- Investigators.
- The Legal Division attorney assigned to the case.

The team leader or coordinator will be the Program Administrator. If more than one team will be needed, make sure that everyone is clear on who is in charge of which team and which functions. In very large facilities, it may be useful to have color-coded name tags to identify teams. All Regional Office staff involved will not always be known to outside agency staff. Knowing that anyone with a red name tag is working on interviews and declarations may cut down on some of the confusion.

Utilizing the Agency Resource List in Section 1-1245 and the Planning Guide for temporary suspension order Procedures in Section 1-1250, the next step is to assign team roles or tasks. Tasks not assigned may be overlooked in what may be a very stressful situation. Some of the tasks may have been delegated to other agencies during your planning meeting with those agencies as outlined in Section 1-1260.

Team roles to be assigned should include the following:

- **Server of a temporary suspension order** - This duty shall be assigned to the Regional Manager or Program Administrator. For county licensing offices, the Licensing Program Manager shall serve the temporary suspension order. Follow procedures as outlined in Sections 1-1190 and 1-1270.
- **Team Leader** - Sets up temporary suspension order command post, reviews team assignments, assesses each team member's progress and assigns additional help if needed. The Regional Manager or Program Administrator (or county equivalent) will serve as team leader.

**1-1290 LEGAL DIVISION PROCEDURES FOR TEMPORARY
SUSPENSION ORDERS AND UNLICENSED OPERATIONS**
(Continued)

1-1290

2. **PROPOSED DECISIONS REQUIRING CLOSURE**

This procedure applies where a facility will be closed if the Deputy Director adopts a proposed Decision and Order revoking a license or denying the application of an operating facility. This procedure does not apply where the license has already been suspended and there are no clients in care and nor does this procedure apply to exclusion actions.

A proposed decision received from the Office of Administrative Hearings that will result in the closure of the facility shall be handled in the following manner:

a. Receipt of Proposed Decision Revoking Suspended License: The attorney should insure that the Regional Office is notified by telephone when the proposed decision is received, regardless of the recommendation decision.

If a proposed decision revokes the license, the Order adopting the decision shall be effective immediately. The proposed Decision and Order shall be served on the respondent and the Regional Office by mail.

If a proposed decision does not revoke the suspended license, the procedures for reviewing and recommending adoption or alternation shall be followed.

b. Notification to Regional Office: The case attorney shall be primarily responsible for immediately notifying the Regional Manager of the proposed decision. If the case attorney is not available, the secretary assigned to that attorney shall notify the Regional Manager immediately.

In order to insure that the greatest possible time is given to the Regional Offices, the contact shall be by telephone. If the Regional Manager is not present, the notifying party shall contact the individual who is acting in the Regional Manager's place and complete the notification.

If a voice-mail recorder is obtained, the notifying party shall contact the receptionist and request that the Regional Manager or other designated individual return the call as soon as possible to insure that notification is completed and to guard against missed or garbled messages.

**1-1290 LEGAL DIVISION PROCEDURES FOR TEMPORARY
SUSPENSION ORDERS AND UNLICENSED OPERATIONS**
(Continued)

1-1290

Once the Regional Office is informed of the proposed decision, it will determine if the facility is still operating and obtain a current roster of clients. If placement agencies or referral agencies are contacted, they should be notified that a proposed decision has been issued by an Administrative Law Judge and that the Department has not adopted that decision. The agencies should be notified that the Department may adopt the decision, thus that would necessitate client relocation.

- c. Order Revoking License:** If the Deputy Director adopts a decision which results in the closure of a facility, the support staff will type in the effective date of the decision on the Order consistent with the memorandum. In most cases, the Order will be effective ten days from the date of service of the Decision and Order to the Respondent. That ten-day delayed effective date is to assist in the orderly notification and transfer of clients.

Stay of Execution of Order Revoking: If the Department wishes to provide a longer period of time, Deputy Director of the Department may stay the date of execution, following the adoption of the decision, by use of §11519(b) of the Administrative Procedures Act. Under this provision, the Department may stay the execution of the Order, which will have already been executed and served. The communication to the Deputy Director recommending a stay shall be in writing, explaining why the effective date of the Decision and Order should be stayed in order to permit the licensee to operate for a longer period of time. The memorandum must be provided to respondent or respondent's attorney if represented, along with a copy of the proposed decision.

Shortened Effective Date: If the Department wishes to shorten the time period for the protection of clients, the Community Care Licensing Division and attorney shall confer and make a recommendation as to the effective date of the order to the Community Care Licensing Division Deputy Director before the Decision and Order is executed. If the Community Care Licensing Division Deputy Director agrees to the date, the attorney shall make written notification to the Respondent's representative and send the same notice to the Deputy Director who is responsible for adopting the decision. The Regional Office may initiate this request to the Legal Division, but any change in the time period must be approved by the Deputy Director.

1-1410 EMPLOYEE ACTIONS (Continued)**1-1410**

When a person contacts a State Regional Office requesting to see his/her rap sheet, the Licensing Program Analyst must get his/her full name, birth date, social security number and other identifying information so that the Caregiver Background Check Bureau can send the correct rap sheet to the Regional Office. The person must show photo identification immediately before viewing the rap sheet to prove he or she is the person on the rap sheet.

The Caregiver Background Check Bureau makes employee criminal record exemption denials but the Regional Office may also deny an application or revoke a license because of such denials. The right to appeal a denial or revocation of a license is separate from the right to appeal a denial of a criminal record exemption.

Unless the Licensing Agency specifies otherwise, the individual, who is the subject of an exclusion action, may remain employed by or be present in the facility until the appeal process is completed. Refer to Section 1-1415 for details on Immediate Employee Exclusion Order Prior to Hearing.

1-1415 IMMEDIATE EXCLUSION ORDERS PRIOR TO HEARING**1-1415**

The statutes concerning employee actions allow the Licensing Agency to require the immediate exclusion of an employee, prospective employee or any person who is not a client from a facility prior to serving an Accusation or completing an Administrative Hearing. This immediate Exclusion Order remains in effect pending the outcome of any appeal requested by the individual. An immediate Exclusion Order prior to hearing is a temporary order. If the person does not appeal the immediate Exclusion Order, the order becomes permanent. If the immediate Exclusion Order is appealed, it lasts only until a decision is adopted following a hearing on the Accusation.

The **California Department of Social Services** or the Licensing Agency may order an immediate exclusion of an employee or person who is not a client if the action is necessary to protect residents or clients from physical or mental abuse, abandonment, or any other substantial threat to their health or safety, **on** the same grounds that warrant the issuance of a **Temporary Suspension Order** against a license before a hearing.

In addition, statutes concerning criminal records (Health and Safety Code Sections 1522, 1568.09, 1569.17 and 1596.871) specify that if a person has certain specified criminal convictions, the Licensing Agency must notify the licensee to act immediately to terminate the individual's employment, remove the person from the facility, or bar the person from entering the facility. When the Licensing Agency gives this notification concerning any person to a facility, it is legally the same as any other order of immediate exclusion against the person. The expedited hearing requirements of the exclusion sections are not triggered when **the** Caregiver Background Check Bureau orders a person out of the facility during the exemption process.

1-1415 IMMEDIATE EXCLUSION ORDERS PRIOR TO HEARING**1-1415**

(Continued)

It is only after the Caregiver Background Check Bureau denies the person a criminal record exemption that the expedited hearing requirements apply.

Generally, an order for removal of a person from a facility prior to any hearing should be made only if the act committed by the person would be cause for a Temporary Suspension Order if the person were not removed from the facility. Immediate Exclusion Orders have a serious impact on the person's career, income, and family. Any order for immediate removal of a person prior to any hearing must be reviewed and approved by the Legal Division.

If you are reading this section because you have a facility employee problem or a problem with a person who has client contact and are wondering whether an Immediate Exclusion Order prior to hearing is appropriate, discuss the case with your Licensing Program Manager and the Licensing Office's assigned legal consultant. Factors to be considered in assessing whether an immediate substantial health and safety risk exists include those factors to be considered when the necessity of a Temporary Suspension Order is being examined (See Section 1-1205, Necessity for a Temporary Suspension Order, to review the criteria for establishing cause for a Temporary Suspension Order). If the person to be excluded is the administrator of an Adult Residential Facility, Group Home, or Residential Care Facilities for the Elderly, contact the Manager of the Administrator Certification Section to advise of the action and discuss any other actions that should be included in the Statement of Facts, such as revocation of the administrator certificate or revocation of an approved vendor. The Administrator Certification Section will provide all information/evidence necessary to the Regional Office for inclusion in the Statement of Facts.

While an Exclusion Order ameliorated the situation, it does not necessarily remove the need to initiate a license revocation.

If the Licensing Agency requires the immediate exclusion of an employee or prospective employee or person who is not a client from a facility prior to any hearing, the agency must serve an order of immediate exclusion upon the individual, notifying the individual of the basis of the agency's action and of the individual's right to appeal the order. This order must be served on the individual personally or by certified mail. A written notice of the order also must be served on the facility and the licensee personally or by certified mail.

If the individual makes a timely appeal of the order, he/she will be served an Accusation within 30 days of his/her appeal time schedule, as required by statute. To be timely, the employee's appeal of the order must be submitted within 15 days of the date that the notice was served on the employee.

Depending on the nature of the immediate exclusion, the Exclusion Order will be sent by either the Licensing Office or the Caregiver Background Check Bureau. If the exclusion is based on a specified criminal conviction, the exclusion process will be handled by the Caregiver Background Check Bureau.

1-1415 IMMEDIATE EXCLUSION ORDERS PRIOR TO HEARING**1-1415**

(Continued)

In all other cases (including investigations by the Licensing Office of complaints, arrests, child abuse index check, Child Protective Services information, or adult or elderly abuse reports resulting in the need to exclude an employee or prospective employee or person who is not a client from a facility prior to any hearing) the Licensing Office is responsible, in consultation with the Legal Division, for investigating and resolving the issue(s) and notifying the appropriate parties of the results, requirements and appeal rights.

The following procedures discussed in this section are specifically for the Licensing Offices. Any case specific questions regarding immediate exclusions handled by the Caregiver Background Check Bureau should be directed to the Caregiver Background Check Bureau. (See Evaluator Manual Section 1-1010, ADMINISTRATIVE ACTION OPTIONS).

During the investigation, the Licensing Program Analyst must not request, recommend or suggest that the licensee remove the employee or person from contact with clients, even by telling the licensee to put the employee or person on desk duty. If, after a completed investigation, an immediate pre-hearing Exclusion Order is warranted and approved, the Licensing Office is to verbally inform the licensee of the exclusion decision and then send the licensee, by certified mail, an order of immediate exclusion prior to any hearing. The Licensing Program Analyst should not ask or tell the licensee to fire the employee. The Licensing Office must also send the excluded individual, by certified mail, an order of immediate exclusion prior to hearing. Sample Exclusion Orders for both the licensee and the excluded individuals can be found in Section 1-1420.

The Licensing Office is responsible for monitoring the licensee to ensure that the licensee complies with the Exclusion Order. The Licensing Program Analyst shall conduct an unannounced visit to a facility within 30 days after the California Department of Social Services serves an order of immediate exclusion from the facility upon the licensee, or a person subject to immediate removal or exclusion from the facility, in order to ensure that the excluded person is not within the facility, unless the Licensing Program Analyst has previously verified that the excluded person is not within the facility. Verification by means other than an actual visit that the excluded person is not within the facility must be approved by the Licensing Program Manager. Whatever verification action is taken, documentation of the action must be placed in the facility file.

Statute requires that parents be notified when someone has been excluded from a Family Child Care Home. The Licensing Program Analyst must verify at the above 30-day visit that the licensee has notified the parents that an individual has been excluded. In addition, the Licensing Program Analyst must verify that original parent signatures are on the Addendum to Exclude form (LIC 995B).

An excluded person has 15 calendar days to appeal the Exclusion Order. Should an excluded person appeal the Exclusion Order, the appeal will be mailed directly to the Statewide Program Office. Make sure when completing the Exclusion Orders that the appropriate Statewide Program Office address is included for appeal purposes.

1-1415 IMMEDIATE EXCLUSION ORDERS PRIOR TO HEARING

1-1415

(Continued)

Upon receipt of the appeal, the Statewide Program Office will call the Licensing Office and FAX to them a copy of the appeal with a request for a Statement of Facts. County licensing offices will send by FAX the Statement of Facts package to the Statewide Program Office and the Statewide Program Office will send the approved package by FAX or overnight mail to the Legal Division, all within five working days of the receipt of the appeal. State Regional Offices will e-mail the Statement of Facts for approval to the Assistant Program Administrator or Program Office designee. When approval is received, the Regional Manager signs the statement of facts for himself or herself and the Assistant Program Administrator or Program Office designee. The Regional Office sends a copy of the signed LIC 9029A along with all supporting documents by FAX or overnight mail to the Legal Division all within five working days of the receipt of the appeal. The Statewide Program Office will also send an "Acknowledgment" letter to the appellant. A sample Acknowledgment Letter can be found in Section 1-1425.

The Legal Division will prepare and arrange service of the Accusation, which must be served within 30 days from receipt of the appeal. Within 60 days of receipt of a notice of defense, the California Department of Social Services shall conduct a hearing on the Accusation. When the hearing is held, the standard of proof shall be the preponderance of evidence and the burden of proof shall be on the California Department of Social Services. The California Department of Social Services shall issue a final decision within 60 days of the hearing. If a final decision is not made within 60 days, the pre-hearing Exclusion Order expires and the excluded person may have contact with clients, pending a final decision excluding the person. The final decision of the California Department of Social Services, however, still may order the person's exclusion from licensed facilities.

If the California Department of Social Services final order does exclude the person from licensed facilities, that order remains in effect until the person petitions the California Department of Social Services for modification of the order (which is permitted any time after one year has passed) and that petition is granted by the California Department of Social Services. Remember that a pre-hearing Exclusion Order that is not appealed by an employee constitutes a "final order" to the same extent as an order that is issued after an appeal and a hearing.

If the excluded person subsequently seeks or obtains employment at another licensed facility, another Exclusion Notice should be served immediately on the excluded person, the facility, and the licensee. This notice, however, should refer to the California Department of Social Services existing Exclusion Order and need not contain any references to appeal rights. Contact the attorney consultant or Assistant Chief Counsel assigned to the office for specific information regarding the content of this kind of Exclusion Notice.

1-1417 EXCLUSIONS “FOR THE RECORD”**1-1417**

In some situations, as noted below, the Department may wish to file formal allegations against the employee or other person who is not a client, and if necessary, conduct a hearing for the purpose of creating a record of the person’s misconduct. If the person is no longer employed, present, or residing at the facility, and a pre-hearing Exclusion Order appears to be unnecessary or the pre-hearing Exclusion Order was served but not appealed by the excluded person, the case still may be appropriate for the filing of an Accusation seeking the person’s exclusion “for the record.” Cases where this would be appropriate are similar to cases where revocation of a license “for the record” are appropriate – namely, serious violations of the licensing statutes or regulations or other serious misconduct. Examples might include:

- a. An employee is arrested for client abuse and is awaiting trial in jail.
- b. An employee was fired for abusing a client and left the State.
- c. The facility now is closed but the employee was responsible for many of the violations.
- d. The person was served with a prehearing Exclusion Order but did not file an appeal. In these instances, no information about the exclusion will be recorded on the person’s rap sheet unless the Department also files an Accusation against the person and obtains a Formal Exclusion Order issued by the Department. Prehearing Exclusion Orders are not the kind of “due process” required by the Department of Justice before information about action by the Department against the person can be placed on the person’s rap sheet.

In cases that are referred for exclusion “for the record” the Regional Office prepares the Statement of Facts and supporting information in the same manner as a referral for revocation “for the record.” Because an immediate Exclusion Order either was not served on the person or, if served, was not appealed, the expedited time frames for serving an Accusation and conducting the hearing do not apply. The Legal Division will give the case the same priority as it does to revocation “for the record.”

If the person to be excluded is the administrator of an Adult Residential Facility, Group Home, or Residential **Care** Facility for the Elderly, contact the Manager of the Administrator Certification Section to discuss any other actions that should be included in the Statement of Facts such as revocation of the administrator certificate or revocation of an approved vendor. The Administrator Certification Section will provide all information/evidence necessary to the Regional Office for inclusion in the Statement of Facts.

1-1600 SUBPOENAS**1-1600**

A subpoena is a written order usually commanding a person to appear at a particular time and place. A subpoena duces tecum can also be used to obtain copies of medical records or other documents. The subpoena Form (LIC 967) is to be completed by the Licensing Program Analyst who requires the subpoena.

Subpoenas must be personally served upon the person being commanded to appear or provide records or documents. A subpoena is served by the Licensing Program Analyst, Investigator or the Legal Division staff.

General procedures for service are outlined below:

1. You will be given an original subpoena and a copy. Give the copy to the person being served; do not give her/him the original. Show the original at the time but do not give it to him/her.
2. The face (front page) of the subpoena will be completed before it is given to you. After you serve the copy of the subpoena, complete the "Proof of Service" on the back of the subpoena.
3. Be sure to ask any persons you approach if they are the named persons. If so, tell them that you have some papers for them and then hand the copy to them.

The person named in the subpoena must be the person actually served. Giving the subpoena to another individual, such as the person's spouse or roommate, when the person is not home, is not sufficient.

4. If the person asks for the original subpoena, tell him/her that the copy is true and contains all the necessary information.
5. If the person refuses to take the subpoena, or closes the door, simply put the subpoena on the floor, on the doorstep, or slide it under the door. These actions complete the service.
6. Remember to not argue with the person.
7. Complete the Proof of Service immediately after serving the person and forward it with the original subpoena directly to the Legal Division as soon as possible.

If there are any complications or questions, contact your **Licensing Program** Manager or legal consultant.